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In re Application of
Walker et al.
Application No. 09/112,131
Filed: July 8, 1998
Attorney Docket No. 96-002-C1

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed on March 27, 2006, which is being treated as a petition to withdraw the holding of abandonment.

On August 25, 2005, the Office mailed a nonfinal Office action, which set a three-month shortened statutory period to reply. In the absence of a timely reply, the application became abandoned on November 26, 2005. On March 8, 2006, the Office mailed a Notice of Abandonment.

Petitioner asserted that a proper response was filed timely. In support of the petition, petitioner submitted a copy of a returned, date-stamped postcard receipt,¹ acknowledging receipt of a "Combined Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences & Petition Under the Provisions of 37 CFR 1.136(a) (Small Entity) 2pp." in the USPTO on January 26, 2006 (certificate of mailing dated January 23, 2006). Copies of the notice of appeal and the request for an extension of time for response within the second month accompany this petition.

In view of the above, the petition to withdraw the holding of abandonment is **granted**. The application is restored to pending status in view of the fact that a response was timely filed and received in the USPTO on January 26, 2006 (certificate of mailing January 23, 2006).

The two-month period for filing an appeal brief under 37 CFR 41.37(a)(1), accompanied by the fee required by 37 CFR 41.20(b)(2), runs from the date of this decision.

¹ Section 503 of the MPEP states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO."

The \$500.00 petition fee is unnecessary and will be refunded to the Deposit Account. Additionally, the Office will charge the Deposit Account for the \$225.00 extension of time fee and the \$250.00 notice of appeal fee.

This matter is being referred to the Technology Center Art Unit 3661.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Christina Tartera Donnell

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